

CSD 1160 [05/15/03]
 Name, Address, Telephone No. & I.D. No.
 ANDREW S. PAULY (SBN 90145)
 ANDREW J. HALEY (SBN 202900)
 GREENWALD, PAULY, FOSTER & MILLER,
 A Professional Corporation
 1299 Ocean Avenue, Suite 400
 Santa Monica, California 90401-1007
 (310) 451-8001

UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF CALIFORNIA
 325 West "F" Street, San Diego, California 92101-6991

In re LSM HOTEL, LLC,	BANKRUPTCY NO.
	10-13024-LT11
GERMAN AMERICAN CAPITAL CORPORATION,	RS NO.
	ASP1

Moving Party

LSM HOTEL, LLC; MATTHEW DINOFIA; and JAVIER SERHAN,

Respondent(s)

MOTION FOR RELIEF FROM AUTOMATIC STAY

REAL PROPERTY **PERSONAL PROPERTY**

Movant in the above-captioned matter moves this Court for an Order granting relief from the automatic stay on the grounds set forth below.

1. A Petition under Chapter 7 11 12 13 was filed on July 26, 2010.
2. Procedural Status:
 - a. Name of Trustee Appointed (*if any*): _____
 - b. Name of Attorney of Record for Trustee (*if any*): _____
 - c. (*Optional*) Prior Filing Information:
 Debtor has previously filed a Bankruptcy Petition on: _____
 If applicable, the prior case was dismissed on: _____
 - d. (*If Chapter 13 case*): Chapter 13 Plan was confirmed on _____ or a confirmation hearing is set for _____

Movant alleges the following in support of its Motion:

1. The following real property is the subject of this Motion:
 - a. Street address of the property including county and state:
 1025 La Bonita Drive, Lake San Marcos, County of San Diego, State of California 92078
 - b. Type of real property (e.g., single family residence, apartment building, commercial, industrial, condominium, unimproved): Hotel
 - c. Legal description of property is attached as Exhibit A.

CSD 1160 (Page 2) [05/15/03]

d. If a chapter 11 or 13 case and if non-payment of any post-petition payment is a ground for relief, attach the accounting required by Local Bankruptcy Rule 4001-2(a)(4) as Exhibit B.

e. *Fair market value of property as set forth in the Debtor's schedules: \$3,500,000.00

f. *Nature of Debtor's interest in the property: owner

2. The following personal property is the subject of this Motion (*describe property*):
All personal property collateral described in the written Commercial Security Agreement perfected through a UCC-1 lien, copies of which are attached as Exhibit "B".

a. Fair market value of property as set forth in the Debtor's schedules: \$ unclear from schedules, but no more than \$1,074,661.00

b. Nature of Debtor's interest in the property: owner

3. *Fair market value of property according to Movant: \$ for purposes of this Motion only, and without prejudice to any of its rights and remedies, Movant accepts Debtor's valuation

4. *Nature of Movant's interest in the property: first priority secured lender

5. *Status of Movant's loan:

a. Balance owing on date of Order for Relief:	\$ <u>11,680,082.73</u>	
b. Amount of monthly payment:	\$ <u>106,746.00</u> (varies based on days in month)	
c. Date of last payment:	<u>1/28/10</u>	
d. If real property,		
i. Date of default:	<u>2/28/2010</u>	
ii. Notice of Default recorded on:	<u>6/30/10</u>	
iii. Notice of Sale published on:	<u>n/a</u>	
iv. Foreclosure sale currently scheduled for:	<u>n/a</u>	
e. If personal property,	<u>non-divisible,</u>	
i. Pre-petition default:	\$ <u>inclusive of 5(a)</u>	No. of months: <u>N/A</u>
ii. Post-petition default:	\$ _____	No. of months: <u>N/A</u>

6. (If Chapter 13 Case, state the following:)

a. Date of post-petition default:

b. Amount of post-petition default: \$ _____

7. Encumbrances:

a. Voluntary encumbrances on the property listed in the Schedules or otherwise known to Movant:

Lender Name	Principal Balance	(IF KNOWN) Pre-Petition Arrearages Total Amount - # of Months		Post-Petition Arrearages Total Amount - # of Months	
1st: GACC	<u>11,018,954.00</u>	\$ <u>661,127.98</u>	<u>7mo.</u>	<u>275,473.60</u>	<u>80 days*</u>
2nd: Javier Serhan	<u>4,000,000.00</u>	<u>unknown</u>		<u>unknown</u>	
3rd:					
4th:					
Totals for all Liens:	\$ <u>15,018,954.00</u>	\$ <u>██████████</u>		\$ <u>275,473.60</u>	\$ <u>██████████</u>

*arrearages through 10/14/10 hearing date

b. Involuntary encumbrances of record (e.g., tax, mechanic's, judgment and other liens, lis pendens) as listed in schedules or otherwise known to Movant: at least \$96,820 in tax liens as stated on Debtor's Schedule E

See attached page, if necessary. (public records show \$139,106.06 in unpaid taxes and assessments)

CSD 1160 (Page 3) [05/15/03]

8. Relief from the automatic stay should be granted because:

- Movant's interest in the property described above is not adequately protected.
- Debtor has no equity in the real property personal property described above and such property is not necessary to an effective reorganization.
- The property is "single asset real estate", as defined in 11 U.S.C. § 101(51B), and 90 days (or _____ days as ordered by this court) have passed since entry of the order for relief in this case, and
 - the Debtor/Trustee has not filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; and
 - the Debtor/Trustee has
 - not commenced monthly payments to each creditor whose claim is secured by the property (other than a claim secured by a judgment lien or by an unmatured statutory lien), or
 - commenced payments, but such payments are less than an amount equal to interest at a current fair market rate on the value of each creditors' interest in the property.
- *Other cause exists as follows (specify): See attached page.

Debtor's bad faith as described in the concurrently filed Memorandum of Points and Authorities

When required, Movant has filed separate Declarations pursuant to Local Bankruptcy Rule 4001-2(a)(5) and (6).

Movant attaches the following: Declarations of Joan Kramer and Andrew S. Pauly, Esq.

- Other relevant evidence:
- (Optional) Memorandum of points and authorities upon which the moving party will rely.

WHEREFORE, Movant prays that this Court issue an Order granting the following:

Relief as requested.

Other: 3. relief from stay to non-judicially foreclose and obtain appointment of receiver in state court pending the foreclosure; 4. the 14 day stay prescribed by Bankruptcy Code section 4001(a)(3) be waived; 5. the Order be binding on any successors, transferees or assignees of the Debtor; and 6. the Order be binding in any bankruptcy case commenced by or against the Debtor and by or against any successors, transferees or assignees of the Debtor for a period of 180 days.

Dated: September 13, 2010

/s/ ANDREW S. PAULY

[Attorney for] Movant
ANDREW S. PAULY

*Separately filed Declaration required by Local Bankruptcy Rule 4001-2(a)(5).